Supreme Court, U.S.
FILED

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No. 96 133 JUL 23 1996

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

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MICHAEL R. WOOD,

Petitioner,

vs.

COUNTY OF SAN MATEO; KEN DEFOREST; CITY OF HAYWARD, a municipal corporation; JOAN CASTANEDA,

Respondents.

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Petition for Writ of Certiorari to the Court of Appeal of the State of California, First Appellate District

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Does the federal court's have "exclusive federal jurisdiction" of a military reservation that continues to be used for public purposes for which the property was acquired being an Air Field that was purchase by the United States, and with the consent of the legislature of the State of California?

## LIST OF PARTIES

The parties in the court below are set forth in the caption. The petitioner is Michael R. Wood, and is the plaintiff in the trial court. County of San Mateo, Ken DeForest, City of Hayward, a municipal corporation, Joan Castaneda.

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No._____

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IN THE
SUPREME COURT OF THE UNITED STATES
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MICHAEL R. WOOD,

Petitioner,

vs.

COUNTY OF SAN MATEO; KEN DEFOREST; CITY OF HAYWARD, a municipal corporation; JOAN CASTANEDA,

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---

Petition for Writ of Certiorari to the Court of Appeal of the State of California, First Appellate District

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PETITION FOR WRIT OF CERTIORARI

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The petitioner Michael R. Wood respectfully prays that a writ of certiorari issue, as the petition draws into question the issue of "exclusive federal jurisdiction" over federal land under Article I, Section 8, clause 17, and federal statute Section 355 (U.S.C. Title 40, sec. 255).

## OPINIONS IN THIS CASE

The decisions, and orders of the lower courts are not reported, and appear in the Appendix hereto.

The order of the California Supreme Court was filed on April 24, 1996, and is not reported denying petition for Review. See Appendix at 1 (hereinafter "App. 1").

The order of the California Court of Appeal, First Appellate District, Division Four was filed on February 29, 1996, and is not reported the petition for rehearing, and the request for judicial notice. See App. 2.

The decision of the California Court of Appeal, First Appellate District, Division Four was filed on January 31, 1996, and is not reported. See App. 3-15.

The decision and order of the Superior Court, State of California, County of San Mateo was filed on November 9, 1993, and is not reported. See App. 16-30.

The order of the Superior Court, State of California, County of San Mateo was filed on September 28, 1993, and is not reported. See App. 31-32.

## STATEMENT OF JURISDICTIONAL GROUNDS

The California Court of Appeal,

First Appellate District, Division Four was filed on January 31, 1996 (App. 3-15), and rehearing denied being filed on February 29, 1996 (App. 2). The California Supreme Court denied the Petition for Review being filed on April 24, 1996 (App. 1). This Court's jurisdiction is invoked under 28 U.S.C. §1257(a).

## CONSTITUTIONAL AND STATUTE PROVISIONS INVOLVED

The constitutional provision at issue is the United States Constitution, Article I, Section 8, clause 17. The relevant langauge provided in part:

> The Congress shall have power * * * to exercise exclusive Legislation in all Cases whatsoever, . . ., and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Errection of Forts, . . ..

The revised statute at issue is section 355 (Act of February 1, 1940, 54 Stat. 19, as amended by the Act of October 9, 1940, 54 Stat. 1083)(U.S.C. Title 40, sec. 255). The relevant langauge provided in part:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States

> over lands . . . which have been . . . acquired . . . by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated.

## STATEMENT OF THE CASE

This petition for writ of certiorari is based upon importan federal question that conflicts with relevant decisions of this Court (Sup. Ct. Ru. 10(c)).

The issue denying "exclusive federal jurisdiction" over a military reservation is apparent and is currently being used by the military (U.S. Air Force, Army, Navy, Marines) is apparent under Article I, Section 8, clause 17 that was purchased by the United States, and with the consent of the legilature of the state of California. The facts giving rise to this controversy are undisputed. This petition involves intervention by this court, as "exclusive federal jurisdiction" over all military reservations are at issue. This case arises from a state court lacking jurisdiction over land being used for the public purposes for which the property was acquired as an airfield. Thus, for all the reasons stated, this case presents precisely the appropriate circumstances

to grant a petition for Writ of Certiorari, and seeks review of only the issue of "exclusive federal jurisdiction" over a military reservation affecting the trial court's jurisidction that was raised in the trial court and summarily denied by the court of appeal raised in the petition for rehearing on February 29, 1996 (App. 2). In the decision and order of the trial court stated in relevant part filed on November 9, 1993 (App. 17-18):

> [T]he court has accordingly considered both the moving and responding papers on the issues of jurisdiction . . ..
>
> JURISDICTION
>
> [T]he United States Government acquired title to the property . . . called the "Hayward Army Air Field" . . .. The Federal Government . . . acquired full, complete and exclusive jurisdiction of the property so encompassed.

A. Introduction:

The original (CT 1-15) and the amended complaint (CT 84-184) was based upon events and omissions giving rise to claims that occurred on a military reservation land. Said land was purchased and by condemnation by the United States of America, and has been an airfield for the

public purposes for which the property was acquired, and the federal district court has had "exclusive federaljurisdiction" over said reservation under Article I, Section 8, clause 17, that was purchased. See, United States v. Tully, 140 Fed. 899 (The phrase "exclusive legislation" has been held to mean "exclusive jurisdiction.")

B. Hayward Army Air Field, a military reservation:

The United States of America filed on September 4, 1942, entitled, U.S. v. 711.57 Acres of Land in Eden Township, Alameda County, Cal., No. 22294-G (CT 102-135), a condemnation proceedings under Title 40 U.S.C. §258(a) to condemn 711.57 acres of land in Eden Township, County of Alameda, State of California, under said authority, and thereafter an order for immediate possession was filed and entered. See, U.S. v. 711.57 Acres of Land In Eden Township, et al., 51 Fed. Supp. 30, 31.

C. Notice of "Exclusive Federal Jurisdiction".

On August 16, 1944, the United States gave written notice to Governor

Warren that the U.S. accepts "exclusive federal jurisdiction" over said land within the State of California acquired by it for military purposes, which in pertinent part states the following (App. 33-34; CT 136-138):

> Accordingly, notice is hereby given that the United States accepts exclusive jurisdiction over all lands acquired by it for military purposes within the State of California, title to which has vested in the United States and over which exclusive jurisdiction has not hereto been obtained.

On August 21, 1944, governor Earl Warren acknowledge receipt of notice that the United States of America had "exclusive federal jurisdiction" over federal land, located at Hayward, California, and so noted on bottem of said letter.

Notice was given of federal jurisdiction over acquistion by giving notice as required under Title 40, section 255, that states pertain part:

> [b]y filing a notice of such acceptance with the Governor of such State . . . where such land are situated.

D. Land acquired for Air Field and for public use.

Said land was acquired for use as an air field, and said reservation continues to be used for "public purposes" for which the property was acquired. From the begining to the present date the military (U.S. Air Force, Army, Navy, Marines) have occupied and used said air field on a continued basises for the public purposes for which the property was acquired, and the entire tract had been legally reserved for military purposes.

Wood petitions this Court for a Writ of certiorari to the Court of Appeals for review of that court's summary denial of its ruling on the issue of "exclusive federal jurisdiction" with the federal district court over federal own land.

## REASONS FOR GRANTING PETITION

This case presents important federal questions of great importance that conflict with the holdings of this court.

A. A Question of Jurisdiction:

It is primarily a question of jurisidiction. Article I, Section 8, clause 17 of the Constitution of the United States specifies the powers of congress.

> The Congress shall have power; . . to exercise exclusive legislation in all cases whatsoever, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the errection of forts, . . ..

The federal government acquired the land for military purposes and as an air field being used to the present date.

The method by which the federal government acquired the areas has been considered the controlling factor in determining the answer to the question. The federal government's jurisdiction over areas acquired accoring to the constitution provision, it has been held that the Congressional power of "exclusive jurisdiction." Western Union

Telegraph Co. v. Chiles, 214 U.S. 274 (1909).

B. Exclusive Federal Jurisdiction as a military reservation.

The United States has "exclusive federal jurisdiction", and is under the utlimate control of the federal government ready for use when needed for military purposes for which it was dedicated. See, Humble Pipe Line Co. v. Waggonner, 376 U.S. 369 (1964).

C. Unconditional consent to the Acquistion of land purchase by the federal government.

In 1892, the United States Supreme Court in Benson v. United States, 146 U.S. 325, 331 (1892) upheld the jurisdiction of the United States to try a person charge with murder on a military reservation, over the objection that the State had ceeded jurisdiction only over such portions of the area as were use for military purposes and that the particular place on which the murder was committed was solely for farming. The Court held that the character and purpose of the occupation having been officially established by the political department

of the government, it was not open to the Court to inquire into the actual uses to which any portion of the area was put.

D. Unconditional Consent by State:

Where the state legislature gives its unconditional consent to the acquistion or purchase of land by the federal government that "exclusive federal jurisdiction" vests in Congress.

In Arlington Hotel Co. v. Fant, 278 U.S. 439, an Arkansas statute relieving an innkeeper from liability to guests for loss by fire unless due to its negligence, enacted after the federal government had acquire Hot Springs National Park, was held not be of any effect on the liability of an innkeeper on the reservation, because the land was within the "exclusive federal jurisdiction" of the United States.

In Western Union Tel. Co. v. Chiles, 214 U.S. 274, a Virginia law imposing a penalty for non-delivery of a telegram was held to be of no effect in the Norfolk Navy Yark "where Congress possess exclusive legislative power."

E. Exclusive Legislation:

Power to exercise exclusive legislation means, of course, that Federal Congress has exclusive federal jurisdiction. It means the exclusive right to pass laws and enforce them. It means that no other sovereignty shall have any right to pass any laws effective, or of force, in such a place.

Some time prior to 1918 the Federal Government acquired property in Alabama on which was constructed the United States Nitrate Plant Number 2 at Musle shoals, on the Tennessee River. J.G. White Engineering Company had a contract for the construction of a plant for the manufacture of ammonium nitrate. Verdo Toy Webb was an employee of that company. One night the bunk house at Sheffield, in which he was furnished a place to sleep by his employer, caught fire and Webb was burned. He brought suit in the State court against the employer claiming damages for personal injuries for alleged negligence on the part of the employer permitting the bunk house to burn.

The defense made was that the place was under the exclusive jurisdiction of the Federal Government and that the State law did not apply. This contention was sustained by the trial court and affirmed by the Alabama Supreme Court in Webb v. J.G. White Engineering Corporation, 204 Ala. 429, 85 Sou. 729. The Supreme Court holding, in effect, that the property was under the "exclusive jurisdiction" of Congress.

Congress has completely preempt a particular area, and exclusive federal jurisdiction is vested in the federal courts. See, Metropolitan Life Ins. Co. v. Taylor (1987) 481 U.S. 58, 63.

## CONCLUSION

For these reasons, a writ of certiorari should be granted to review the order and decision of the court below that summarily denied the issue on "exclusive federal jurisdiction" in light of the trial courts statement "The Federal Government acquired full, complete and exclusive jurisdiction of the property so encompassed."

Respectfully submitted,

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# A P P E N D I X

BEST AVAILABLE COPY

Order of the California Supreme Court, Filed April 24, 1996

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California Supreme Court S038647
(First Appellate District, Division 4, No. A064000/A064990)

IN THE SUPREME COURT OF CALIFORNIA

---

MICHAEL R. WOOD, Appellant,

v.

COUNTY OF SAN MATEO Et Al., Respondents

And Companion Case

---

Petition for review DENIED.

LUCAS

Chief Justice

Order of the Court of Appeal
of the State of California

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FIRST APPELLATE DISTRICT, DIV. 4
Filed February 29, 1996

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Court of Appeal No. A064000/A064990
(San Mateo County Sup. Ct. No. 352960)

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CALIFORNIA COURT OF APPEAL

MICHAEL R. WOOD,

v.

COUNTY OF SAN MATEO et al.

BY THE COURT:

The petition for rehearing is denied. The request for judicial notice is denied.

(Anderson, P.J., Poche, J. and Reardon, J. participated in the decisions.)

Dated: February 29, 1996.

ANDERSON P.J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FOUR

Filed January 31, 1996

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Court of Appeal No. A064000/A064990
(San Mateo Cty. Sup. Ct. No. 352960)

MICHAEL R. WOOD,

Plaintiff and Appellant,

v.

COUNTY OF SAN MATEO et al.,

Defendants and Respondents-

Plaintiff Michael R. Wood appeals from (1) the order denying his motion for relief from a dismissal in favor of defendants County of San Mateo and Ken Deforest, and (2) the order of dismissal in favor of defendants City of Hayward and Joan Castaneda. We reverse the First order and affirm the second.

BACKGROUND

The history of this case and these appeals is best summarized by quoting from a recent order of this Court:

"On February 14, 1994, we granted

the motion of respondents City of Hayward and Joan Castaneda to dismiss the appeal of appellant Michael R. Wood. After we denied appellant's petition for rehearing, and the Supreme Court denied his petition for review, our remittitur issued on May 13, 1994. Eleven months later appellant has moved to have the remittitur recalled, the order of dismissal vacated, and the reactivated appeal No. A064000 consolidated with pending appeal No. A064990.

"Disposition of this motion requires a summary of the complex procedural background.

"Appellant's complaint named four defendants -- the County of San Mateo, Ken Deforest, the City of Hayward, and Joan Castaneda.

"Appellant's complaint was dismissed as to defendants County of San Mateo and Ken Deforest by an order entered on May 5, 1993. Notice of entry was provided to appellant that same day. On September 28, 1993, the trial court filed an order denying appellant's request for relief pursuant to Code of Civil Procedure section 473.

"On November 9, 1993, the trial court filed an order granting the motion

of defendants City of Hayward and Joan Castaneda that appellant be declared a vexatious litigant and required to post security of $40,000 by December 15, 1993.

"On November 24, 1993, appellant filed a notice of appeal from the September 28 and November 9 orders. Five days later, November 29, appellant filed an amended notice of appeal adding the May 5 dismissal order.

"On January 5, 1994, defendants City of Hayward and Castaneda moved to dismiss the appeal from the November 9 order on the ground that order was not appealable and was not reviewable until a final judgment had been entered.

"While this motion was pending, the trial court on January 11, 1994, made an order dismissing appellant's complaint as against the City of Hayward and Castaneda by reason of appellant's failure to post security in compliance with the order of November 9, 1993.

"On January 18, 1994, appellant filed a second amended notice of appeal purporting to add the January 11 dismissal to the other orders he sought to appeal.

"All papers and records mentioned to this point were filed under A064000.

"On February 14, 1994, this Court made an order granting the motion of defendants City of Hayward and Castaneda and dismissing appellant's appeal.

"Four days later, on February 18, 1994, appellant filed a separate notice of appeal from the dismissal order of January 11. This appeal was designated A064990. The record has been filed and the appeal is fully briefed.

"The order dismissing appellant's complaint as against defendants County of San Mateo and Deforest constituted a final judgment from which appellant could appeal if he filed a notice of appeal within 60 days following notice of the order's entry on May 5, 1993. (Code Civ. Proc., §581d; Cal. Rules of Court, rule 2(a).) This deadline was jurisdictional and could not be extended. (Pressler v. Donald L. Bren Co. (1982) 32 Cal.3d 831, 835.) This deadline had expired by the time appellant filed his initial notice of appeal on November 24, 1993. His attempts to designate the order of dismissal in his subsequent amended notices were ineffective in extending the jurisdiction period. The May 5 order of dismissal is therefore

final, not subject to challenge, and beyond review by this court.

"The order denying appellant's request for relief pursuant to Code of Civil Procedure section 473 could be appealed if a notice of appeal was filed within 60 days after the order was filed on September 28, 1993. (Code Civ. Proc., §904.1, subd. (b); Cal. Rules of Court, rules 2(a)-(b); 9 Witkin, California Procedure (3d ed. 1985) Appeal, §114, pp. 130-131.) Appellant's initial notice of appeal was therefore effective in commencing a valid appeal from the order.

"The order of November 9, 1993, granting the motion of defendants City of Hayward and Castaneda to have appellant declared a vexatious litigant is not appealable, but it could be reviewed in connection with a timely appeal from a subsequent final judgment, i.e., the order of January 11, 1994, dismissing appellant's complaint against these defendants. (Roston v. Edwards (1982) 127 Cal.App.3d 842, 846; Witkin, op. cit. supra, Actions, §264, p. 292.)

"It thus appears that dismissal was appropriate with respect to the purported appeals from the May 5 order of dismissal

and the November 9 vexatious litigant order, but not as to the September 28 order. Accordingly, our remittitur will have to be recalled and the underlying order modified.

"The status of the second dismissal order, the one made on January 11, 1994, in favor of the City of Hayward and Castaneda, is more problematic. It might, as appellant insists, be treated as prematurely covered by the notices he filed in A064000. Alternatively, it is still the subject of A064990. The solution is suggested by the state of the latter appeal.

"As previously mentioned, in A064990 the record has been filed and briefing completed. An examination of appellant's opening brief discloses that not only does he address the January 11 dismissal order by challenging the underlying vexatious litigant determination, he also attacks the denial of his request for relief from the first dismissal. Technically, this was improper because the September 28 order was not designated in the notice of appeal filed in A064990. More fundamentally, the 60-day jurisdictional period had long since

expired. But appellant thus furnishes the means to correct the mistake indvertently committed in A064000. If the two proceedings are consolidated, the valid appeal from the September 28 order can be resolved on the basis of the record and briefs already filed in A064990. This course of action will spare all concerned the delay that would result from preparation of a separate (and largely duplicative) record, and additional briefing.

"The clerk of this Court is directed to recall the remittitur issued in A064000 on May 13, 1994. The order filed herein on February 14, 1994, is modified as follows: Good cause appearing, the purported appeals from the orders of May 5 and November 9, 1993, are dismissed. The appeals in A064000 and A064990 are consolidated for purposes of argument and decision. The consolidated for purposes of arguments and decision. The consolidated appeals shall cover the order filed on September 28, 1993, and the order of dismissal filed on January 11, 1994. All further filings shall be under A064990."

REVIEW

I

Plaintiff first attacks the order denying the order of September 28, i.e., the order denying his motion for relief pursuant to Code of Civil Procedure section 473. The order is reviewed for abuse of discretion. (In re Marriage of Connolly (1979) 23 Cal.3d 590, 597-598.)

The trial court sustained a general demurrer to the complaint, but it granted plaintiff "10 days [leave] to amend." Two days after the minute order to this effect the court signed and filed an order reciting that plaiintiff was granted "leave to amend within ten [] days of the service of this order on the plaintiff." Notice of this written order was mailed to plaintiff that same day -- March 24, 1993. The ten days, plus five more pursuant to Code of Civil Procedure section 1013, would expire on April 8, 1993, but because this was a Saturday, plaintiff had until the following Monday -- April 10, 1993 -- to file an amended complaint. Plaintiff's amended complaint was mailed on April 8 but it was not filed until April 12, 1993. In early May, the involved defendants made an ex

parte application for signature and entry of an order of dismissal, based on the failure to amend within the period of leave. The court, which was advised that plaintiff's amended pleading was on file, entered the order of dismissal as requested. Almost four months later, plaintiff unsuccessfully moved to set aside the dismissal.

The language of the statue governing at the time provided in pertinent part: "When a demurrer to any pleading is sustained . . . and time to amend . . . is given, the time so given runs from service of notice of the decision . . . unless the notice is waived in open court, and the waiver entered in the minutes or docket." (Code Civ. Proc., §472b.) By delaying the start of the amendment period until "service of this order on the plaintiff," the court provided plaintiff with formal notice of the decision and its effect. In short, the court fully complied with section 472b.

The trial court did, however, abuse its discretion when it granted defendants' ex parte application for a dismissal. This was the conclusion in the virtually

identical circumstances of Gitmed v. General Motors Corp. (1994) 26 Cal. App.4th 824. The plaintiff there missed the amendment deadline by one day, but did file an amended pleading. A dismissal based upon an ex parte application was granted by the trial court but reversed on appeal. The reviewing court noted that an untimely pleading is effective for some purposes, one of which is to prevent a unilateral termination of the litigation. The defendant there, like ones here, could point to authority (e.g., Wilburn v. Oakland Hospital (1989) 213 Cal.App.3d 1107) upholding ex parte dismissals following expiration of the period for amending a complaint if no amended pleading has been filed. The Gitmed court pointed out that the underlying premise is "that, by failing to amend, the plaintiff may be implied to have abandoned the case or to have admitted that no further amendment is possible. That implication cannot be made when the amended pleading has been served." (Gitmed v. General Motors Corp., supra, 213 Cal.App.3d 824, 829.) Once a revised pleading is on file, the defendant must make a noticed motion

either to have it striken or to have a dismissal entered. (Ed. at pp. 825-826, 829.) The Gitmed court took the trouble to state that "We find the fact that respondent gave no notice in this case, after receiving service of the amended complaint, to be a pratice not condoned by this court." (Id. at p. 829.) We wholeheartedly agree with this opinion.

The only postural difference between this case and Gitmed is that the ruling reviewed here is not a dismissal but a refusal to set aside a dismissal. That difference is immaterial because the standard of review is the same. (See Gitmed v. General Motors Corp., supra, 26 Cal.App.4th 824, 827.)

II

Concerning the dismissal in favor of defendants City of Hayward and Joan Castaneda, plaintiff's arguments are directed to the underlying determination that he is a vexatious litigant. That determination is also reviewed for abuse. (Taliaferro v. Hoogs (1965) 237 Cal.2d 73, 75.)

Defendants' motion and supporting documentation comprise approximately 800 pages of the record. That material

provides abundant support for these statements in defendants' brief: "Plaintiff Michael R. Wood has commenced a plethora of lawsuits against those he deems responsible for his eviction from an airplane hangar at the City of Hayward Air Terminal. He has sued anyone having the remotest connection to the unlawful detainer action that culminated in his eviction, including the company that served the summons, the company that removed his possessions, the sheriffs who supervised the operation, and the attorneys who represented the City, not to mention the members of the City Council, the City's airport committee and the City's airport director. In this case, alone, Wood named 35 party defendants. He simply repackages his dispute after each rejection and sues yet again, hoping that his next complaint will succeed where the others have failed." No purpose would be served by taking the time to set out all of the substantiating specifics. It is barely conceivable that any trial court would have denied defendants' motion. Certainly the trial court did not abuse its discretion by granting it.

BEST AVAILA

The order of September 28, 1993, denying the motion for relief pursuant to Code of Civil Procedure section 473 is reversed. Plaintiff shall recover, from defendants County of San Mateo and Ken DeForest alone, costs of appeal allowed by rule 26 of the California Rules of Appeal, with this exception; plaintiff shall recover, from defendants County of San Mateo and Ken DeForest alone, one-half of the costs of preparing the record.

The order of dismissal in favor of defendants City of Hayward and Joan Castaneda is affirmed. These defendants shall recover their costs of appeal.

Poche, J.

We concur:

Anderson, P.J.

Reardon, J.

LE COPY

Decision and Order of the
Superior Court of California, County
of San Mateo

Filed: November 9, 1993

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San Mateo County Superior Court
Case No. 352960

MICHAEL R. WOOD,

Plaintiff,

vs.

COUNTY OF SAN MATEO, et al.,

Defendants.

The Motion of the defendants City of Hayward and Joan Castaneda to have Plaintiff declared a vexatious litigant, to require him to post bond and to enjoin him from filing further actions throughout the State of California, absent express written permission of the Presiding Judge of the Court in which the action is sought to be filed, came on regularly for hearing September 14, 1993. Plaintiff Michael R. Wood appeared in person representing himself, attorneys Jacqueline M. Jaurequi Debra Margolis, appeared on behalf of the moving parties/defendants, City of Hayward and Joan Castaneda.

In the course of arguments, Plaintiff Wood for the first time raised an issue of the constitutionality of the vexatious litigant statutes, CCP §391 through 391.7. The Court ordered further briefing solely on this one issue to be supplied by both sides by 5:00 p.m., October 1, 1993. On September 22, 1993 Plaintiff Wood filed a Supplemental Points and Authorities titled "Notice that Court has no Jurisdiction of Subject Matter [CCP §396]". He did not file any supplemental Points and Authorities dealing with the constitutionality question which he had raised orally at the aforesaid hearing.

Defendant on October 1, 1993 filed a "Supplemental Memorandum Re: Constitutionality, Preemption and Jurisdiction Issues in Support of Motion for Vexatious Litigant Declaration, Bond and Free Filing Order". Although not required by the Court to address the jurisdictional issue raised by Mr. Wood in his improper supplemental pleading, the Defendants chose to do so and the Court has accordingly considered both the moving and the responding papers on the issues of jurisdiction and preemption as well as the consitutionality issue.

## JURISDICTION

Shortly after the outbreak of World War II the United States Government acquired title to the property which was then called the "Hayward Army Air Field" in order to help provide for the defense of the United States of America. The Federal Government at that point in time acquired full, complete and exclusive jurisdiction of the property so encompassed. At the conclusion of World War II the United States of America transferred title to the entire real estate encompassed within the Air Field to the City of Hayward by Quit Claim Deed dated April 16, 1947. This Deed was accepted by the City of Hayward and duly recorded.

Government Code §113 enacted in 1967 is some 20 years after execution of the Quit Claim Deed and being procedural only has no relevancy whatsoever to the effect of the 1947 retransfer of the property from the United States to the City.

In 1947 there was neither a standardized Federal procedure nor a standardized California State procedure in effect for the retransfer of lands taken by the United States to the jurisdiction of any

particular state. (Although there did then exist statutory procedures to establish consent to the cession of State jurisdiction to the United States). In 1947 there had existed numerous previous occasions wherein Congress had made an express retro-cession of jurisdiction with respect to specific areas of land. The Supreme Court of the United States in Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525, 542 had stated in dictum that cession of jurisdiction to the Federal Government "is necessarily temporary, to be exercised only so long as the place is continued to be used for public purposes for which the property was acquired or reserved from sale. When they cease to be thus used the jurisdiction reverts to the State." Subsequent to that decision it has been held in at least two cases that upon the disposal or relinquishment of land by the United States, jurisdiction reverts to the State, even in the absence of specific congressional action to retrocede jurisdiction and that no active acceptance by the Legislature of the State is necessary in order to effect the return of the jurisdiction. (La Duke v. Melin, 45 N.D.

349, 177 N.W. 673; Renner v. Bennett, 31 Ohio St. 431; Ottinger Bros. v. Clark, 191 Okla. 488, 131 Pac.2d 94). See opinion California Attorney General No. 6-312 (December 12, 1946) and cases there cited.

Further, the Court notes that the very issues of jurisdiction and/or preemption in the case at bar and/or related cases have been already considered by the Northern District Court of the United States for California and by the Court of Appeals for the Ninth Circuit in combined actions 91-15297 and 91-15926. Both the District Court and the Court of Appeal abstained from exercising jurisdiction and held that the rule set down in the case of Younger v. Harris, 401 U.S. 37 (1971) that "when a case falls within the proscription of Younger, a District Court must dismiss the Federal action." (Fresh Int'l v. Argricultural Labor Relations Board (9th Cir. 1986) 805 Fed.2d 1353, 1356) applies here. The Court in ruling in the present combined cases stated "abstention is necessary to protect the integrity and dignity of the State Courts."

The Court of Appeals for the Ninth

Circuit therefore on August 31, 1992 has already ruled that the State Court does have jurisdiction of this matter when it stated "the District Court's ruling that Wood's claims were subject to Younger ABSTENTION IS AFFIRMED, THE ENTRY OF SUMMARY JUDGMENT IS VACATED, AND THE CASE IS REMANDED FOR DISMISSAL. THE DISTRICT COURT'S OTHER FINAL RULINGS ARE AFFIRMED IN AL OTHER RESPECTS."

CONSTITUTIONALITY

The issue of the constitutionality of the California Vexatious Litigants Statutes found constitutional at both the State and the Federal level.

Almost 30 years ago the California Court of Appeal in the case of Taliaferro v. Hoogs, (1965) 236 Cal.App.2d 521 did thorough analysis of a challenge to the Vexatious Litigant Statutes on grounds, among other things, of equal protection, vagueness, deprivation of a right to jury trial and a legitimate basis for distinguishing the class of pro per litigants from those represented by counsel. The finding of constitutionality in Taliaferro has been consistently followed as late as last year (see Andrisani v. Saugus Colony Limited (1992)

8 Cal.App. 517, 522 n. 7 and First Western Development Corporation v. Superior Court, (1989) 212 Cal.App.3d 860, 868.

Any remaining conceivable constitutional objects were considered by the California Court of Appeal and rejected in the case of Muller v. Tanner, (1969) 2 Cal.App.3d 445. The Court in Muller further found that "an examination of the reasoning in (Taliaferro v. Hoogs) indicates that it is sound, and that it should be followed on the issues it resolved."

The Court of Appeal in Taliaferro relied in part on the analysis and decision of the United States Supreme Court in Cohen v. Beneficial Industrial Comm. Corp., (1948) 337 U.S. 541 in ruling that the requirement for a bond in the Vexatious Litigant Statutes is constitutional. The U.S. Supreme Court in Cohen was considering the constitutionality of a New Jersey Statute requiring Plaintiffs' in Shareholders' Derivative suits to post a bond under certain circumstances. The Supreme Court at page 528 of that Decision stated:

" . . . [I]t cannot seriously be

> stated that a State makes such unreasonable use of its power as to violate the Constitution when it provides libility and the security for payment of reasonable expenses if a litigation of this character is adjudged to unsustainable . . . [W]e deal with power, not wisdom; and we think . . . it is within the power of a State to close its Courts to this type of litigation if the condition of reasonable security is not met."

Thus, at all levels, all issues of constitutionality and preemption raised by Plaintiff in the matter at bar have been considered one way or another and the Statute have been found to be constitutional, valid and enforceable and there has been no preemption of the field by the Federal Government.

CONCLUSION

Thus, all of Plaintiff's jurisdictional, preemption, and constitutionality arguments fail. The California Vexatious Litigant Statutes are constitutional, valid and enforceable.

The Court grants the Request to Take Judicial Notice and the Supplemental Request to Take Judicial Notice filed herein by the Defendants and moving parties pursuant to California Evidence Code §452(d).

California Code of Civil Procedure §391 provides that:

"A vexatious litigant now includes any person who:

1. In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a Small Claims Court that have been (i) finally determined adversely to remain pending at least two years without having been brought to trial or hearing; or

2. After a litigation has been finally determined against the person, repeatedly re-litigates or attempts to re-litigate in propria persona, either (i) the validity of the determination against the same Defendant or Defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; or

3. In any litigation while acting in propria persona repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or

4. Has been declared a vexatious litigant."

CCP §§391.1 and 391.3 mandate that the Court must order the Plaintiff to furnish security for the moving parties reasonable expenses, including attorneys' fees, if the Plaintiff fits any one of these statutory definitions and if there is no reasonable probability that the Plaintiff will prevail in the present litigation.

CCP §391.7 further provides that the Court may enter a pre-filing order requiring the vexatious litigant to obtain leave of Court before filing any other actions in this State.

The Plaintiff has commenced, prosecuted or maintained at least five law suits in the past seven years that have been disposed of adversely to the Plaintiff, including nine law suits against the Defendant City of Hayward in this matter, alone. The Appendix of Court Records in support of Defendants' Motion and with regard to which the Court has taken judicial notice, Volumes 1, 2 and 3, Pages 1 through 645, evidencing such actions and the results therein, are hereby adopted by the Court, referred to and incorporated herein by reference as though here set out in full.

The Plaintiff has repeatedly re-litigated the same issues and grievances that have already been finally determined against him. See the documentation encompassed under moving parties' Request for Judicial Notice and Appendix of Court Records in support of this Motion, Volumes 1, 2 and 3, Pages 1 through 645, which Appendix and Records evidence such actions and the results therein are hereby incorporated herein by reference as though here set out in full and expressly made a part of this Decision.

There is no reasonable probability that Plaintiff will prevail in the present action. The Court notes that its own files in this matter are in Volume 5 of the Court's Records and that with the completion of this proceeding a new Sixth Volume of the pleadings herein will have to be opened. Much of the Court's files pertain to Motions both on the merits, on procedural matters and on discovery matters with regard to almost all of which Plaintiff has not prevailed. This Court has heretofore dismissed with prejudice those portions of the Complaint in this matter alleging wrongs by the County of San Mateo and its former

Airport Director Ken DeForest. The present Complaint of more than 76 pages seems to be great measure merely a compendium of all of the other Complaints by the Plaintiff against the City of Hayward.

Pursuant to Nakash v. Superior Court, (1987) 196 Cal.App.3d 59, 67, 68, there is great likelihood that the Doctrines of Res Judicata and Collateral Estoppel bar these claims. Further, the Complaint fails to allege any torts by either the Defendant Joan Castaneda or the Defendant the City of Hayward.

For example, insofar as a claim of defamation is alleged against Ms. Castaneda, the pleadings in fact seem to relate to claims that Ken DeForest (already dismissed from this suit) made possibly defamatory remarks about the Plaintiff to Ms. Castaneda. One cannot be held liable for libel or slander for simply listening to what someone else may or may not have said. Pursuant to the holding in First Western Development Corp. v. Superior Court, (1989) 212 Cal. App.3d 860, 871, imposition of a requirement that the Plaintiff post a bond for the reasonable expenses of the

Defendants is appropriate.

A review of this Court's files together with those Court documents of which the Court has taken judicial notice, including the comments of Federal Judge Fern Smith and Alameda County Superior Court Judge Richard Hodge found at Pages 376 and 640 of the documents of which the Court has been requested to take judicial notice, amply demonstrate that Mr. Wood has kept the City embroiled in the present litigation at huge tax payers' expense, that he has been a prodigious consumer of and the drain upon Muncipal resources, has used up both at the State and the Federal level more than his equitable portion of judicial resources, and it seems that he has been entirely undeterred by his repeated defeats or by the verbal rebukes of the judges who have ruled on his cases.

Pursuant to CCP §§391.3 and 391.7 and the cases of In re Luckett, (1991) 232 Cal.App.3rd 107 and In re Whitaker, (1992), 6 Cal.App.4th 54, the Plaintiff should further be order to seek leave of Court before filing any new actions in propria persona in the Courts of this State.

BEST AV

ORDER

It is accordingly the Order of the Court that:

1. The Motion of Defendants to have Plaintiff declared a vexatious litigant, to require the Defendant to post bond in this action and to require that the Plaintiff obtain written leave of Court before filing any further actions in the State Courts of the State of California in propria persona is granted;

2. On or before December 15, 1993, the Plaintiff shall post an appropriate undertaking with this Court in the sum of $40,000.00 to insure payment of the reasonable attorneys' fees and expenses of Defendants in this action before proceeding any further herein;

3. The Plaintiff is precluded and enjoined from filing any new actions or complaints in propria persona in the Courts of this State without first obtaining leave of the Presiding Judge of the Court where the litigation is proposed to be filed;

4. The Clerk of the Superior Court of San Mateo County shall not file any new actions or complaints or litigation presented by the Plaintiff in propria

AILABLE COPY

persona after the date of this Order unless the Plaintiff has first obtained an Order from the Presiding Judge permitting same,

5. Disobedience of this Order may be punished as a contempt of Court;

6. The Clerk of this Court shall provide the Judicial Council with a copy of this pre-filing Order pursuant to CCP §391.7(d); and

7. Michael R. Wood is hereby declared to be a vexatious litigant and each and every consequence of being so designated as specified in CCP §391.7 and in any other provision of law, shall apply to Michael R. Wood.

Dated: Nov. 9, 1993

Harlan K. Veal

Judge of the Superior Court

Order on Motion
under CCP §473,

Superior Court of California, County
of San Mateo

Filed: September 28, 1993

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San Mateo County Superior Court
Case No. 352960

MICHAEL R. WOOD,

Plaintiff,

vs.

COUNTY OF SAN MATEO, et al.,

Defendants.

Plaintiff's motion to vacate and set aside an order dismissing Action No. 352960 came on regularly for hearing on September 13, 1993. MICHAEL R. WOOD appeared in propria persona and THOMAS F. CASEY, III, COUNTY COUNSEL by Milton H. Mares, Deputy County Counsel appeared as counsel for the defendants County of San Mateo and Ken Deforest. After hearing, the matter was submitted to the court for a ruling. The court having read considered the supporting and opposing points and authorities and attached exhibits and having heard and considered the arguments of the plaintiff and counsel for the defendants, and good cause

appearing therefore,

IT IS ORDERED that the motion to vacate and set aside order of dismissal be, and hereby is, denied.

Dated: September 24, 1993.

Walter H. Harrington, Jr.
Judge of the Superior Ct.

(Letter from War Department)

W A R  D E P A R T M E N T

Washington, D.C.

August 16, 1944

Dear Governor Warren:

The laws of the State of California (Section 33 of the Political Code of California, and Section 34 of said Code as amended by an act of the legislature of California approved July 5, 1939 (Cal. Stat., 1939, Chap. 710, p. 2231) permit the assumption of exclusive federal jurisdiction over lands within that State acquired by the United States for military and certain other purposes.

Under Section 355, Revised Statutes, as amended by the act of February 1, 1940 (54 Stat. 19), and by the act of October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), it is provided in effect that unless and until the United States accepted jurisdiction over lands acquired or in which an interest shall have been acquired after February 1, 1940, it shall be conclusively presumed that no such jurisdiction has been accepted.

Accordingly, notice is hereby given that the United States accepts exclusive jurisdiction over all lands acquired by it for military purposes within the State California, title to which has vested in the United States and over which has vested in the United States and over which exclusive jurisdiction has not heretofore been obtained.

Information is being assembled to assist you in complying with an act of the legislature of California approved May 17, 1943, Chap. 536), and will be forwarded under separate cover.

Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,
(Signed: Joe J. McCloy)
Acting Secretary of War

The original of this letter was received at the Governor's Office, Sacramento, California, on August 21, 1944.

(Signed: Earl Warren)
Governor

LB

# ORIGINAL

ORIGINAL

Supreme Court, U.S.
FILED
AUG 19 1996
CLERK

MICHAEL R. WOOD
San Francisco Intn'l Airport Post Office
P.O. Box 280,867
San Francisco, California 94128-0867

DISTRIBUTED
AUG 20 1996

August 16, 1996

Supplemental

William K. Suter, Clerk
Supreme Court of the United States
On First Street, N.E.
Washington, D.C. 20543

RECEIVED
AUG 19 1996
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Re: Wood v. County of San Mateo,
No. 96-133

Dear Mr. Suter:

I am in receipt of a letter to you dated August 12, 1996, that relates to a Petition for Writ of Certiorari that was filed on July 24, 1996, entitled Wood v. County of San Mateo, No. 96-133.

Counsel's letter does not address the single issue or the argument being raised within the petition as follows:

> Does the federal court's have "exclusive jurisdiction" of a military reservation that continues to be used for public purposes for which the property was acquired being an Air Field that was purchased by the United States, and with the consent of the legislature of the State of California?

Counsel argues within his letter - "[Wood] did not even raise in the California Court of Appeal until his petition for rehearing".

The record shows that the issue of jurisdiction was raised in the trial court on November 9, 1993, (App. 17-18), and the court stated the following:

> [T]he court has accordingly considered both the moving and responding papers on the issue of jurisdiction . . .. [T]he United States Government acquired title to the property . . .. The Federal Government . . . acquired full, complete and exclusive jurisdiction of the property so encompased.

Also, the issue of jurisdiction was raised in the petition for rehearing before the Court of Appeal, and in the petition for review before the California Supreme Court being summarily denied.

Counsel over looks the fact that, jurisdictional issue can be raised at "any" time, and has been raised in the trial court, and thru out the appellate process. Additionally, subject matter jurisdiction may be raised by any party. It can even be raised by the plaintiff who improperly filed the case in the wrong court,



6 pp

after losing on the merits! (See, American Fire & Gas Co. v. Finn (1951) 341 U.S. 6; May Dept. Stores v. Graphic Process Co. (9th Cir. 1980) 637 F2d 1211, 1216). Consequently, jurisdictional issues can be raised at any time in the appeal process, including in a petition for rehearing. (See, Shabazz v. Carrol, 565 F2d 1096, 1097 (9th Cir. 1977). Furthermore, no subject matter jurisdiction may be by consent where none exists (California v. LaRue (1972) 409 U.S. 109), and lack of subject matter jurisdiction is not waived. (See, Sosna v. Iowa (1975) 419 U.S. 393, 398).

Now we turn to counsel's reference to (3) three U.S. Supreme Court citations having nothing to due with the issue of jurisdiction, and where summarly denied. Those cases related to the service of a summons, and a Application for Stay of Judgment having nothing to due with "exclusive federal jurisdiction". Additionally, counsel raises other issues that have nothing due with the trial court having "no subject matter jurisdiction", which is not before this court in this Petition for Writ of Certiorari, and petitioner "seeks review of only the issue of "exclusive federal jurisdiction" at page 5, ln. 2-3, of the petition.

Counsel for Joan Castaneda and the City of Hayward have submitted the matter, and have "express waiver of the right to file a brief in opposition". Additionally, counsel will or have not filed a "brief in opposition is filed, upon the expiration of the time allowed for filing." (U.S. Sup. Ct., Rule 15.5). Counsel has elected not to file by stating "[R]respondents elect not to file a brief in opposition", but instead sends this letter brief talking everything except the issue of "exclusive federal jurisdiction" pending before this court.

This court should grant certiorari, because of the serious federal question raised concerning "exclusive federal jurisdiction".

Respectfully submitted,

Michael R. Wood

MICHAEL R. WOOD,
Attorney for Petitioner,
In Propria Persona

MRW/mrw

Proof of Service attached:

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August 12, 1996

William K. Suter, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Re: Wood v. County of San Mateo,
No. 96-133

Dear Mr. Suter:

Michael Wood's petition for certiorari presents no more reason for this Court's review than have his many other such petitions. *See, e.g., Wood v. Superior Court*, 498 U.S. 1025 (1991); *Wood v. Superior Court*, 498 U.S. 992 (1990); *Wood v. Superior Court*, 498 U.S. 933 (1990). In this petition, he seeks to overturn a decision declaring him to be a vexatious litigant. But his principal argument—which he did not even raise in the California Court of Appeal until his petition for rehearing—does not address the merits of that determination. Instead, he asserts that the state courts have no jurisidction over this case—which he himself filed in state court—because the municipal airport in the City of Hayward, where the underlying events took place, is in fact a military reservation.

Because Wood's argument is patently frivolous, respondents Joan Castaneda and the City of Hayward elect not to file a brief in opposition at this time. If the Court wishes to see such a brief, respondents will, of course, promptly file one.

Respectfully submitted,

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By _____
Jacques LeBoeuf
Attorneys for Respondents Joan Castaneda and the City of Hayward

PROOF OF SERVICE BY MAIL

(CCP §1013a, §2015.5)

State of California, )
) ss.
County of Alameda. )

I, the undersigned, say: I am and was at all times mentioned, a citizen of the United States and a resident of the County of Alameda, over the age of eighteen years and not a party to the action or proceedings: that my home address is P.O. Box 2147, Alameda, California, 94501, that on August 16 , 1996, I served the within Letter (William K. Suter, Clerk, Wood v. County of San Mateo, No. 96-133, dated August 16, 1996)

on the plaintiff or defendant or attorneys in said action by depositing a true copy thereof, enclosed in a separate, seal envelope, with postage thereon fully prepaid, in the United States Post Office at Hayward, California, address to the plaintiffs or defendants or their attorney of record of said plaintiffs or defendants or attorneys at the address of said plaintiff or defendant or attorney, as follows:

Ezra Hendon, Esq.
Jacques LeBoeuf, Esq.
CROSBY, HEAFEY, ROACH & MAY
1999 Harrision Street
Oakland, California 94612-3573
(Attys. for Respondents City of Hayward, Joan Castaneda)

Milton Mares, Esq.
Deputy County Counsel
County of San Mateo
401 Marshall Street
Redwood City, Calif. 94063
(Attys. for Respondents County of San Mateo and Ken Deforest)

(also, see attached mailing list)

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on August 16, 1996, at Hayward, California.

Jonathon W. Rodgers

Jonathon W. Rodgers

Mailing List (Petition for Writ of Certiorari) Cont'd

1. Milton H. Mares, Esq.
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   For Defendant/Respondent:
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2. Jacqueline Jaurequi, Esq.
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   For Defendant/Respondent:
   (City of Hayward, and Joan Cast

3. Court of Appeals, First Appellate District
   Marathon Plaza - South Tower
   3030 Second Street, Eight Floor
   San Francisco, California 94107

4. Judge Walter H. Harrington, Jr.
   San Mateo Superior Court
   Hall of Justice & Records
   401 Marshall Street
   Redwood City, California 94063-1655

5. Judge Harlen K. Veal
   San Mateo Superior Court
   Hall of Justice & Records
   401 Marshall Street
   Redwood City, California 94063-1655

6. Director of the Judicial Council of California
   Judicial Council of California
   303 - 2nd Street
   Marathon Plaza - South Tower, 4th Floor
   San Francisco, Californai 94107

Mailing List (Petition for Writ of Certiorari) Cont'd

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